UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Estate of Liko Kenney	*	Case No. 10-cv-181-PB
	*	
	*	
v.		
	*	
Town of Franconia et al	*	March 26, 2012

Plaintiff's FRCP 59(e) Motion for Reconsideration

Pursuant to FRCP 59 (e) plaintiff Estate moves the Court to reconsider its summary judgment entered February 28, 2012 against all plaintiff federal claims and to alter its judgment. Plaintiff respectfully files this motion because it believes that the Court failed to apprehend material facts in dispute relative to plaintiff's allegations of Fourth Amendment and 42 USC Sec. 1983 injury: 1) that contrary to law Liko Kenney was subjected to individualized, humiliating, life threatening excessive force during a 2007 routine overdue inspection traffic stop by defendant Franconia police officer Bruce McKay known in the community and to Littleton District Court to hate Liko Kenney, and to have physically assaulted Kenney during a 2003 traffic stop prior to McKay's 2007 stop of Kenney after which McKay and Kenney were shot dead; 2) that compelling evidence exists in the Court record that McKay was disrespected and feared by the people of

Franconia, especially children, and by fellow police officers and firemen, where one retired policeman submitted a detailed affidavit to this Court expressing facts and opinions within his personal, professional witness and knowledge of McKay's long term community bullying, use of excessive force, lawlessness, and unprofessionalism; 3) that Kenney was owed a demonstrably breached legal duty by municipal defendants to train and supervise defendant McKay responsibly; 4) that Kenney's killing by defendant Floyd was clearly avoidable had municipal defendants met their legal duties to review and sanction numerous public complaints against defendant McKay; and 5) that where non-movant plantiff clear record facts of these issues are material to plaintiff's complaint and are plainly disputed by movant defendants, summary judgment is not proper.

I. **Introduction**

The Court is aware from the record that Liko Kenney and Bruce McKay had a long running feud based at least on a 2003 stop, seizure and arrest of Kenney by McKay in a Franconia public park where Kenney was assumed by McKay to be without right. The record, including a copy of the police video disc of the 2003 stop, shows that McKay and

Kenney came to blows, when Kenney insisted that he was lawfully in the park. Officers in addition to McKay were involved in subduing and arresting Kenney. The Estate avers that Kenney told friends and family that he was sexually assaulted during this arrest by McKay.

The Estate avers that McKay was well known in the Franconia region and that he knew a great deal about long term residents of Franconia - population 1047 in 2009 – like Kenney. The Estate avers that McKay knew or had reason to know that Kenney had trouble, including learning disabilities, in the pubic schools since McKay routinely policed the schools and Franconia region juveniles, and that Kenney's teachers and administrators knew he had emotional and learning problems in school.

The Estate avers that Liko Kenney was a native New Hampshire 'free spirit', raised his whole life in the 'live free or die' state to think for himself. He routinely expressed his interest in and respect for the US Constitution, a copy of which he often carried, and quoted to friends and family in terms of his love of liberty and freedom, and that of all Americans, under our fundamental law. Kenney was not mentally ill, a loner, or prone to violence. He lived in the bosom of a large extended family

on over 700 Franconia family farming, recreation and wilderness acres, purchased by his grand parents after his grandfather served in WW II, done he said since he had seen enough killing for one lifetime, and retreated to the New Hampshire north country for renewal, to build ski lodge and tennis camp businesses, to help the disabled, and to raise children and grandchildren including Liko Kenney who would know the value of a good and free life, know sports and Olympic success, and become good citizens, in the shadows of the Old Man, Mt. Washington and the Robert Frost farm. Accordingly Liko Kenney was a New Hamsphire native son; a child, a grandchild, a cousin, a nephew, a student, a neighbor, an employee, a friend to many and a citizen.

Bruce McKay was not a good policeman. Many citizens of Franconia, where he was not raised and had no extended family or connection other than his job, complained about him, to him personally, to judges, his supervisor, his peer officers and his selectboard. He was alleged for years to have bullied and harassed children, motorists, the elderly, merchants, at least one local attorney, and others. He had a reputation for avoiding and violating

the law regulating his behavior, concerning his proper jurisdiction, prosecutorial rights and duties in court, police equipment including emergency radios, video and audio recording equipment in his cruiser and the cruiser itself, and pepper spray; and excessive force during investigations, arrests and custodies of US citizens.

Franconia is a bucolic New Hampshire hamlet, renowned for iconic mountains, notches, foliage, rivers, gorges, falls, cold, snow, skiing, hiking, hotels, small shops, hospitality and good will. Its government typically responds more like family than bureaucracy, where officials know residents and their families intimately and for generations. It is almost unthinkable that the tragic killings of two well known men, like Liko Kenney and Bruce McKay, could happen there. Somebody would see any trouble of this kind coming, and try to stop it, if they could. It is impossible in such a Rockwell-esque setting to think otherwise.

For reasons unknown to the Estate, New Hampshire never ordered a full investigation of this question. On information and belief the Estate avers that had New Hampshire done so the Estate may not be in court today.

It would know why Liko Kenney had to die to show how dangerous Bruce McKay was to his community, and why Liko believed that he needed to carry a gun in his car. It would know why McKay preyed upon and stalked Kenney as Kenney's friends have told the Estate's attorneys. It would know why McKay's supervisors knew about McKay's failing yet did nothing to stop him. It would know why a policeman in a small town felt he was able and willing to us his power to coerce, intimidate and compel his will over the people he was hired and sworn to protect and serve.

Accordingly the Estate prays this Court consider the immortal words on justice of John Adams, as he prepared and argued the Amistad case US v Libellants and Claimants of the Schooner Amistad, 40 US 518 (1841) for his clients, alleged mere mutinous slaves. Pre-trial Adams wrote co-counsel Ellis Gray Loring that their clients:

> …claimed from the humanity of a civilized nation compassion…claimed from the brotherly love of a Christian land sympathy…it claimed from a Republic professing reverence for the rights of man justice… Instead they were seized, jailed, accused of piracy and murder…The fact that they had attempted to free themselves meant that they were not slaves but masters…

Adams opened trial by pointing to the Declaration of

Independence hanging on the wall of the room where the Supreme Court met. Reflecting that his case would be based on the Declaration of Independence, with its guarantee of the inalienable rights of man that supercede any legal claims or political expediencies, he argued:

> I derive consolation from the thought that this Court is a Court of JUSTICE. And in saying so very trivial a thing, I should not on any other occasion,perhaps, be warranted in asking the Court to consider what justice is. Justice, as defined by the institutes of Justinian, nearly 2000 years ago, and as it is felt and understood by all who understand human relations and human rights is, Constans et perpetua volantis, jus SUUM cuique tribuendi, The constant and perpetual will to secure to every one his OWN right.

Summary judgment in this case has denied Liko Kenney, and the Estate, such justice, of the constant and perpetual will to secure to every one his own right. The Estate prays this Court to do what is lawfully right and honorable on the facts that the Estate has proved in the Court record to date, and alter its February 28, 2012 decision, by allow the case to go forward to trial, for the following arguments and reasons.

II. Standard of Review

A. Summary Judgment Is Improper Where Material Facts Are In Dispute.

The Court properly held that summary judgment is

appropriate when the record reveals “no genuine dispute as to any material fact" and that "the evidence submitted in support of the motion must be considered in the light most favorable to the nonmoving party drawing all reasonable inferences in its favor." Judgment, pp. 1 & 2; FRCP 56(c). But, to anchor its summary judgment grant analysis the Court misapplied Scott v.Harris, 550 US 372 (2007), where police ended a high speed car chase by crashing the pursued car with a cruiser's bumper, rendering the pursued plaintiff driver quadraplegic. The Court cited the case for the arguably controlling summary judgment principle that complaint *inferences* alone are dispositive to summary judgment and must be supported by the record for nonmovant plaintiffs to prevail.

This analysis is not supported by controlling summary judgment law and policy in all federal and state courts, where the focus is not on inferences, but rather on disputed allegations of material **f**acts, of which plaintiff's affidavits and pleadings are full and this Court did not aver otherwise. Further, not only did Scott make plain the primacy of material facts disputes when deciding summary judgment, Scott commanded that summary

judgment be denied where as in the instant case:

> there have been not yet been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from courts are required to view the facts and draw reasonable Scott's version. When things are in such a posture inferences 'in the light most favorable to the party opposing the [summary judgment] motion.'US v Diebold, 369 US 654, 655 (1962). In qualified immunity cases, this usually means adopting the plaintiff's version of the facts. Scott at 378.

Ironically, based on compelling police cruiser video evidence of a kind that the Estate can only wish that it could provide the Court today, since the video of McKay's life threatening ramming of Kenney's car would vindicate plaintiff claims of excessive force, summary judgment in Scott was based on its holding that the cruiser's compelling video tape so persuasively negated nonmovant's assertions of disputed facts that summary judgment applied. In the instant case movants have not offered a similar video tape, the fair inference of such absence, taken in a light favoring the non-movant, is that the tape, which surely exists, does not support movants' version of events.

Contrary to the Court's view, the law and policy supporting summary judgment denial is clear where as here the nonmovant has painstakingly shown the Court that

considerable material facts remain in dispute and therefore at present as a matter of law the movant cannot prevail unless and until those facts are resolved in the movants' favor by trial. Summary judgment is a drastic remedy. Selva v. Footwear, 705 F.2nd 1316 (1983). It must be accompanied by great care in respect to the entire record. Yuba-Goldfields v US, 723 F.2nd 884 (1983). It must be used judiciously in cases giving rise, as here, to issues of motive and intent. Douglas v Anderson, 656 F.2d 528 (1981). In any type of litigation standards for summary judgment are strict. Lupia v Biscuit Co., 586 F.2d 1163 (1978). A trial judge should be slow in disposing of any case of complexity by summary judgment. US v Lowell, 557 F.2d 70 (1977). Summary judgment is an extreme remedy which may not be granted unless the movant has established a right to judgment beyond controversy. Inland Oil & Transport v. US, 600 F.2d 725(1979). To justify summary judgment it must clearly appear that fact issues are so unsubstantial that it would be obviously futile to try them. Fitzwater v. Lambert, 539 F.Supp. 282(W.D.Ark.1982). Summary judgment must be denied unless it is clear what the

truth is. Jones v. Musicians, 446 F.Supp. 391(N.D.Cal 1977). Summary judgment is a harsh and drastic remedy applied only when it appears beyond doubt that no issue of fact remains. Cordon v TWA, 442 F.Supp. 1064 (D.Kan.1977). Summary judgment is granted only when all facts entitling the movant are admitted or clearly established. Boston v Hills, 420 F. Supp. 1291 (D.Mass.1978). It is axiomatic that summary judgment is granted only where facts entitling the movant to judgment are admitted or clearly established. Adickes v SH Kress, 398 US 144 (1970), cited by Bromley-Heath Modernization Committee v Boston Housing Authority, 459 F.2d 1067 (1972). The function of the motion is not to force a party to try his entire case thereby to the court. Davidson v Stanadyne, 718 F.2d 1334 (1983). Summary judgment is no substitute for trial where there are disputed fact issues and may not be granted if there is an issue of material fact. Maine Asbestos Litigation, 581 F.Supp. 963 (D.Me.1984). Summary judgment should not be granted unless movant shows a right to judgment with such clarity that there is no room for controversy and the opponent is not entitled to recover under any discernible circumstances. Mandel v.US, 719 F.2d 963 (1983).

III. **Facts in Dispute**

A. Plaintiff nonmovant estate demonstrated considerable facts in conflict with movants'rendition, precluding summary judgment.

Plaintiff estate has exercised great pains in this tragic case to avail the Court of all factual evidence that it can readily supply that shows how, where and why the parties are deeply divided on the facts. The case presents profound issues of fairness, motive and intent by all of the parties, counseling against any rush to judgment. The case is difficult for both sides since primary witnesses, Liko Kenney and Bruce McKay, and one named party, Bruce McKay, are dead. A key potential witness, Caleb Macauley, Kenney's innocent passenger on the day Kenney died, the only person on the scene for all events during and subsequent to Kenney's fatal stop, to date refuses to come forward voluntarily, despite plaintiff requests, citing the trauma of revisiting events that nearly killed Macaulay when, as testified to and electronically recorded by affiant-investigator Tom Nickels in his Estate-paid investigation of the case, defendant McKay repeatedly rammed Kenney's small car, putting Macaulay and Kenney in fear of their lives.

This Court ruled that it will not decide summary

judgment based on hearsay, plaintiff's academic explanations of why hearsay allegations are not a basis to grant summary judgment notwithstanding. Plaintiff asserts that it is circumstantially obvious that witness Macaulay was exposed to extreme, life threatening trauma from case events due to no fault of his. Plaintiff asserts that Macaulay has not been proved or alleged by defendants to be an unreliable or of dishonest character. Plaintiff asserts therefore that before ruling for summary judgment, and making that judgment in any part because the Court refused to hear by a business records exception, Macaulay's alleged facts, to a professional investigator, though he, a former police officer, recorded Macaulay's statement electronically, and swore to their truth by affidavit, the Court has a duty to consider the substantial injustice done to the plaintiff and to justice in these circumstances. The Court need not believe what Macaulay said. It need only acknowledge that Macaulay substantially refuted material facts as alleged by defendants concerning what Macaulay saw and experienced on the day Kenney and McKay were killed.

The Court is aware from the record that these alleged

facts include that McKay knew Kenney and family intimately, that Kenney feared McKay based on a past arrest and assault, that Kenney stopped when signaled by McKay, that Kenney requested a new officer for his citation and was refused; that Kenney tried by cell phone to call his uncle living mere yards down the road to appear at and witness the stop; that because Kenney's uncle did not answer the phone call that Kenney told McKay that Kenney would drive to the uncle's home well known to McKay; that Kenney left the stop at a low rate of speed; that McKay raced past Kenney, U-turned, and confronted Kenney head on; that Kenney responded by stopping, and then backing off the road, where he stopped a third time; that McKay then rammed the small Toyota repeatedly with his SUV cruiser with life threatening force, slamming the Toyota occupants hard back and forth in their seats; that Kenney signaled to McKay to stop and McKay refused; that Kenney expressed extreme fear to Macaulay, that he saw that Kenney was truly afraid, and that Macaulay was truly afraid; that the car was pushed far off the road toward and proximately inside the bucket of a Caterpillar bucket loader highway maintenance type machine; that McKay afterward left his

vehicle to pepper spray Kenney and innocent Macaulay; that Kenney fired a gun toward McKay; and that Macaulay saw a flash indicating that McKay's weapon was drawn and perhaps was fired.

Further Macaulay told Nickels that once defendant Floyd was on scene Floyd shot and killed Kenney, held McKay's weapon over Macaulay and told Macaulay pick up Kenney's weapon; that Macaulay knew that Floyd would kill Macaulay if he complied and he refused; that Floyd continued to harass Macaulay by bragging that he killed Kenney; that Kenney was in fear of his life by Floyd until police arrived; that Macaulay testified to an state police to all of these facts.

Almost none of these facts comport with defendants' versions.

It is plain that Tom Nickel's sworn affidavit avers substantially more facts that defendants dispute. Nickels, in his professional capacity as plaintiff's investigator, electronically recorded multiple witnesses in addition to Macaulay, sometimes in the presence and at the bequest of affiant Brad Whipple, a retired Sugar Hill, New Hampshire policeman and McKay and others defendants co-

worker. The court apparently has decided that sworn statements by Nickels on these interviews are inadmissible hearsay for summary judgment purposes, and not within any hearsay exception to effect substantial justice in this case.

The record contains the sworn affidavit of retired Sugar Hill police officer Brad Whipple, who worked with McKay and other defendants for years. Whipple's affidavit clearly contains considerable facts of his observations and opinions of the defendants, in all of the circumstances of conduct,professionalism, fitness, supervision, training, duty, and plaintiff injury contemplated in plaintiff's complaint. The Court did not specifically reject Whipple's affidavit, or judge it inadmissible. The legal implication is therefore that Whipple's affidavit is lawful evidence of material facts in dispute in the case, on which a court must preclude movants' motion for summary judgment. The plaintiff hereby asserts therefore that failure to deny summary judgment in the case based on Whipple's affidavit alone is an error of law, and that the Court thus has a duty under FRCP 59(e) to alter by rescision its summary

judgment accordingly.

III. **The Facts in Dispute Preclude Summary Judgment As a Matter of Law**

A. The facts and inferences therefrom in this case have been judged to preclude summary judgment by law.

As discussed, the Court ruled in this case, citing Scott v Harris, infra, that inferences gleaned from alleged facts must be supported by the record, else summary judgment lies. But contrary authority exists. Indeed summary judgment has been held inappropriate even where the parties agree to the basic facts, but disagree on on inferences drawn therefrom, if responsible minds might differ on inferences arising. Cable Holdings v. Home Videos, 572 F.Supp. 4823. The Court went to considerable lengths to show that where just some inferences might not be supported by the record, summary judgment is lawful. But what result if only some inferences might not be supported by the record, and many or most are? The Court did not claim that all inferences were not supported by the record. It did not find that all facts gave rise to one set of inferences.

It is axiomatic then that a possibility exists that triers of fact in this case could disagree as to both what

facts are material, and what inferences to draw from them. This is precisely the problem considered by many courts weighing summary judgment, the great majority of which have rejected summary judgment on principle that plaintiffs are entitled to trial unless there is no dispute as to material facts, and that only application of law remains. As asserted, Brad Whipple's affidavit alone proves a basis for a court to find material facts in dispute. His affidavit suggests that multiple inferences are possible even from facts he asserted. The long established summary judgment law and policy tradition has been only to take the case from the jury when there is no substantial dispute as to material facts, and that law application is clear.

Thus, summary judgment should not be granted if even only circumstantial evidence of fact inferences tend to establish genuine issues for trial. Marks v Lyon County, 590 F.Supp. 1129 (D.Kan.1984). It is not within the province of the district court to resolve issues of disputed facts by summary judgment affidavit. Brandt v. Crane, 558 F.Supp. 1339 (N.D.Ill.1983). Even if facts are clear, courts should not grant summary judgment if conflicting inferences can be drawn from those facts.

Chase v. Morgan, 590 F.Supp. 1137 (S.D.N.Y.1984) Summary judgment is inappropriate whenever conflicting inferences can be drawn from facts. Doe v. US Civil Service Commissioner, 483 F.Supp. 539 (S.D.N.Y.1980). Even if evidentiary facts are undisputed, summary judgment must be denied if inferences from facts are disputed. Stonehill v Security Bank, 68 FRD 24.

Moreover, summary judgment is deemed inappropriate where, as here, the government is alleged to have acted with malice to deprive constitutional rights. Such cases have been judged particularly insusceptible to resolution by summary judgment. Petersen v. Christiansen, 455 F.Supp. 109. In civil rights cases versus police for unlawful arrest, the legal uncertainty as to the objective reasonableness of police conduct in making arrest, showed the impropriety of summary judgment irrespective of parties agreement that facts presented no genuine issue of material fact. Foster v Zeeks, 540 F.2d 1310 (1976). In civil rights cases alleging, as here, deprivation of plaintiff rights during arrest and custody, genuine issues of material fact precluding summary judgment exist re whether police breach duties of supervision to correct

misconduct of which they had notice by articles and affidavits that it was well known rights were being violated by officers. McClelland v. Facteau, 610 F.2nd 693 (1979).

Record facts, including a video disc in the instant Court file, show that Liko Kenney was beaten by defendant McKay in a 2003 traffic stop, and that Kenney and passenger Macaulay were attacked by ramming by McKay in his police SUV cruiser after a 2007 routine traffic stop where no one threatened McKay or others. At least one court has held that whether beatings received from police are reasonably related to or based on a duty to maintain order or to have arrestees follow commands, or rather were intentional, malicious, and for the sole purpose of causing arrestee harms, was a question of fact precluding summary judgment in an action under a statute governing deprivation of civil rights. Martinez v. Rosado, 614 F.2nd 829 (1980). Also, complaints when verified by a prisoner against law enforcement pursuant to a civil rights statute have been deemed sufficient to contradict affidavits submitted by officials on motion for summary judgment in Sec. 1983 cases. Id.

The instant complaint in grounded in federal

constitution and civil rights statute claims. Such claims have been held to raise genuine issues of material fact if a 'shakedown' of an arrestee's property (ie car) was routine, or whether it was conducted solely for purposes of harassment, which preclude summary judgment in Sec. 1983 cases for damages for violations of substantive rights to privacy. Palmer v Hudson, 697 F.2nd 1220 (1983). Sec. 1983 cases where, as here, prisoners allege they are beaten with excessive force on multiple occasions present issues of material fact precluding summary judgment. King v Meekins, 593 F.Supp. 59 (D.C.D.C. 1984). Government good faith defenses of Sec. 1983 cases, in which the instant Court's analysis of at least defendant McKay's conduct sounds during McKay's 2007 seizure of Kenney and Macaulay, almost always raise questions for determination by the jury rather than a court on a motion for summary judgment. Shifrin v. Wilson, 412 F.Supp. 1282 (D.C.D.C.1976). Excessive force averments by by prisoners are presumed true when summary judgment is filed in Sec. 1983 cases. Suits v Lynch, 437 F.Supp 38 (D.Kan.1977). If civil rights complaints identify and allege breach of a

right or privilege secured by the US Constitution, they generally are sufficient to withstand summary judgement unless beyond doubt no facts support the claim. Taylor v. Nichols, 409 F.Supp. 927 (D.Kan.1976).

B. Kenney's privacy interests are key to determining this case, but were not sufficiently considered by the Court.

On the instant facts, plaintiff asserts that the violations complained of began with unlawful state abrogation Kenney's motor vehicle privacy rights. The Fourth and Fourteenth Amendments protect individuals from arbitrary, oppressive invasions of personal security. Delaware v Prouse, 440 US 648 (1979). Even for prisoners, the Supreme Court holds that privacy rights deprivations must be guided by principles permitting only those constitutional rights impacting prison security or administration to be stripped. Wolff v McDonnell, 418 US 539,(1974). Where individuals are singled out for search or seizure by law enforcement, there is an ever present danger that a rights restriction will be motivated by a policeman's personal desire to harass or humiliate rather legitimate law enforcement concerns. There is no record evidence that any other Franconia officer other than

defendant McKay ever used a police vehicle to ram someone, and surely not after a routine traffic stop for an expired inspection sticker.. There *is* record evidence that Franconia strictly prohibited the practice for any reason. See Affidavit of Christopher King, Exhibit D, Plaintiff's Opposition to Defendants' Motion for Summary Judgment, showing Franconia police department photo-copy documentation of its policy forbidding ramming. Courts have recognized that allowing random individual privacy violations may provide for increased opportunities for officials to abuse power and use privacy violations for harassment. Palmer v Hudson, 697 F.2d 1220 (1983).

The Supreme Court articulated this concern particularly in the motor vehicle stop context. Prouse, infra, an auto stop case, held that the "grave danger of abuse of discretion", US v. Martinez-Fuerte, 428 US at 559, "does not disappear simply because the automobile is subject to state regulation resulting in numerous instances of state-citizen contact. Cady v. Dombrowski, 413 US 433, 441 (1973)...if the government intrudes...the privacy interest suffers...Marshall v Barlow's, 436 US at 312-

13...An individual operating or traveling in an automobile does not lose reasonable expectations of privacy simply because the automobile and its use are subject to government regulation...Were the individual subject to unfettered intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed. As Terry v. Ohio recognized, people are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks. Nor are they shorn of those interests when they step from the sidewalks into their automobiles. Adams v. Williams, 407 US 143, 146 (1972).

It was principally this set of privacy rights Kenney thought he was exercising when he told McKay he was leaving the traffic stop to go to his uncle's house on the day of his death. There is no doubt that the Estate made a good faith effort under duress of key witness – Macaulay – unavailability due to his fear and mental health concerns of this case that plaintiff could not produce Macaulay's own affidavit of material facts giving rise to defense of Kenney's intent to protect his privacy rights, but plaintiff did so by investigator Nickel's affidavit of

Macaulay's tape recorded interview with Nickels. Defendant disputes these key material facts, making these conflict alone sufficiently legally substantive to compel the court to deny movant's summary judgment motion and permit the case to go to trial.

IV. Conclusion

The Estate asserts that the foregoing allegations and evidence of disputed material facts in this case, its the Estate's analysis of the applicable summary judgment law and policy, and the interests of justice timelessly advocated by John Adams and upheld in the most complex cases of Adams' time by our Supreme Court compel the instant Court to reconsider its February 28, 2012 grant of summary judgment in this matter and exercise its authority under FRCP 59(e) to alter that judgment accordingly, permitting the case to go to trial.

Respectfully submitted,

Estate of Liko Kenney
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/s/ Charles O'Leary_____ Date: March 26, 2012

Certificate of Service

I hereby certify that a copy of this Motion was forwarded to record counsel via ECF and via US Mail to Gregory Floyd, NH State Prison for Men, TWC PO Box 14, Concord, NH 03302.

/s/ Charles O'Leary_____ Date: March 26, 2012